

SMITH LLC
JOSHUA SMITH, ESQ.

November 4, 2021

Via CM/ECF

The Honorable Norman K. Moon
The Honorable Joel Hoppe
United States District Court for the Western District of Virginia
255 West Main Street
Charlottesville, Virginia 22902

**Re: *Sines et al. v. Kessler et al.*, No. 3:17-cv-00072; Violation by
Plaintiffs' Counsel of the Court's July 9, 2021 Settlement Conference
Order (ECF No. 989)**

Dear Judge Moon and Judge Hoppe:

Earlier this week, on October 29, 2021, an article was published in the National Law Journal, entitled "'We Don't Settle with Nazis': Inside the Years-Long Legal Process to Get the Charlottesville Case to Trial."¹ In this article, Plaintiffs' lead counsel, Roberta Kaplan, is quoted by another of Plaintiffs' counsel, Michael Bloch, as having told him that they (i.e., Plaintiffs' side) had no intention of ever negotiating in good faith towards settlement with any Defendant in this litigation. Specifically, the article says:

Bloch, counsel with Kaplan Hecker, said he was interviewing with the firm in late 2018 when partner Roberta Kaplan said she needed someone to help work on the Charlottesville case, and he jumped at the chance to join the team.

At that time, the case was set to go to trial in just a few months—that date was later moved. Bloch recalled asking Kaplan whether she was confident the case was going to go to trial and wouldn't settle.

"She gives me this powerful look and was like, 'We don't settle with Nazis,'" Bloch said. "That's when I knew we were heading to trial."

¹ Jacqueline Thomsen, *"We Don't Settle with Nazis": Inside the Years-Long Legal Process to Get the Charlottesville Case to Trial*, NATIONAL LAW JOURNAL (Oct. 29, 2021), <https://www.law.com/nationallawjournal/2021/10/29/we-dont-settle-with-nazis-inside-the-years-long-legal-process-to-get-the-charlottesville-case-to-trial/> (emphasis added). A true and correct copy of this article is annexed hereto as Exhibit 1.

Mr. Bloch said this to Ms. Kaplan in late 2018, according to the article. This is a damning admission, as it confirms that Plaintiffs' counsel violated this Court's July 9, 2021 Order regarding the August 20, 2021 settlement conference — to wit, that each side was expected to negotiate in good faith towards settlement, and if they had no intention of doing so, to inform the Court so that such proceedings could be cancelled and neither the parties' nor the court's time would be wasted. (See ECF No. 989 ¶¶ 4, 6, 12.)

We have just learned, directly from the mouths of Plaintiffs' counsel, that they never had any intention of complying with the Court's July 9, 2021 order, and my clients have incurred substantial costs and attorney's fees preparing for and attending these proceedings in good faith. In fact, I was initially retained specifically for purposes of this settlement conference; at the time, my clients believed, as did I, that Plaintiffs' counsel were genuinely interested in trying to work, in good faith, towards settlement. We now know that they were not.

In light of their published admission that they never had any intention of negotiating with my clients in good faith (or, indeed, any other Defendant), I respectfully request that Plaintiffs' counsel be ordered to pay all costs and attorney's fees incurred in connection with the August 20, 2021 settlement conference.² Given Plaintiffs' counsel's prior public statement that its intention in bringing this litigation is to bankrupt the Defendants,³ its conduct in disobeying both the letter and the spirit of this Court's orders so as to waste the Defendants' limited resources (not to mention the limited judicial resources of this Court) is especially insidious, and cannot be ignored.

Plaintiffs' counsel have stated, *ad nauseam*, that this case is about "accountability." Well, accountability starts at home.

² "If a party appears at the settlement conference without having complied with the requirements of this Order *or fails to negotiate in good faith at the settlement conference*, the Magistrate Judge may continue or cancel the settlement conference, *and may assess against the non-complying party, attorney, or both, a monetary sanction, which may include the fees and expenses incurred by the other parties in attending the settlement conference.*" (ECF No. 989 ¶ 14 (emphasis added).)

³ See Ellen Wexner, *Roberta Kaplan Takes White Supremacy to Court*, MOMENT MAGAZINE (Jan. 6, 2021), <https://momentmag.com/roberta-kaplan-takes-white-supremacy-to-court/>, <https://archive.ph/5XpmX> (archived Oct. 24, 2021) (interview with Roberta Kaplan, lead counsel for Plaintiffs):

[Moment:] What is the ideal outcome for this lawsuit, and are you hopeful?

[Kaplan:] **We absolutely can and will bankrupt these groups.** And then we will chase these people around for the rest of their lives.

Id. (emphasis added).

Very truly yours,

/s/ Joshua Smith

Joshua Smith, Esq.

*Counsel for Defendants David Matthew
Parrott, Matthew Heimbach, and
Traditionalist Worker Party*